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7 UNITED STATES BANKRUPTCY COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9  
10 In re ) Bk. No. 09-41735  
11 ANGELICA APOLINAR, )  
12 Debtor. ) CHAPTER 13  
13 \_\_\_\_\_ )  
14 ) R.S. No. DRP - 647  
15 )  
16 ) MOTION FOR RELIEF FROM  
17 ) AUTOMATIC STAY  
18 )  
19 ) Hearing-  
20 ) Date : January 22, 2010  
21 ) Time : 10:00 AM  
22 ) Place : U.S. Bankruptcy Court  
23 ) 1300 Clay Street, 2nd Floor  
24 ) Oakland, CA  
25 ) Courtroom 215  
26 )  
27 )  
28 )

U.S. Bank, NA, its Successors and/or Assigns, its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtor's property. This Motion is brought pursuant to 11 U.S.C. §362(d)(1) for "cause" and due to the failure of Debtor to make required payments as set forth in the attached Declaration. Debtor's

1 failure to make required payments provides "cause" for relief from the Automatic Stay in  
2 accordance with the ruling of the Bankruptcy Appellate Panel in In re: Ellis, 60 B.R. 432.  
3

4 In addition, and in the event that this Court continues the Automatic Stay, Movant  
5 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including  
6 a requirement that Debtor reinstates all past arrearages and immediately commence regular monthly  
7 payments.

8 Movant alleges that the commercially reasonable value of the subject Property is  
9 approximately \$230,000, as evidenced by Debtor's Schedules filed with this Court. Movant  
10 requests that this Court take judicial notice of the aforementioned Schedules pursuant to Federal  
11 Rule of Evidence Section 201.

12 Movant also seeks an Order terminating and vacating the Automatic Stay for all  
13 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of  
14 appropriate foreclosure remedies, without the requirement of further notice or publication, except as  
15 may be required by state law.

16 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this  
17 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to  
18 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to  
19 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and  
20 Electric Co., 549 U.S. \_\_\_\_\_ (2007), and as allowed under applicable non-bankruptcy law.

21 In addition, Movant requests such further relief as is just.

22 This Movant also seeks an Order waiving the 14-day stay described by Bankruptcy  
23 Rule 4001(a)(3).

24 This Motion shall be based on these moving papers, as well as the attached  
25 Declaration.

26 Responsive pleadings, points and authorities and declarations are not required, but  
27 may be filed, pursuant to Bankruptcy Local Rule 4001(f).

1           In the event neither Debtor, the Debtor's Counsel or the Trustee appears at a hearing  
2 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to  
3 foreclose on the Debtor's property located at **1308 Portsmouth Street, Oakley, California** and  
4 obtain possession of such property without further hearing.

5           WHEREFORE, Movant prays judgment as follows:

6           1.) For an Order granting relief from the Automatic Stay, permitting this Movant to  
7 move ahead with foreclosure proceedings under Movant's Deed of Trust.  
8  
9           2.) For such Order regarding adequate protection of Movant's interest as this Court  
10 deems proper.  
11  
12           3.) For attorneys' fees and costs for suit incurred herein.  
13  
14           4.) For an Order waiving the 14-day stay described by Bankruptcy Rule 4001(a)(3).  
15  
16           5.) For such other relief as this Court deems appropriate.

17           PROBER & RAPHAEL  
18           A LAW CORPORATION

19           DATED: December 21, 2009

20           By /s/ Dean R. Prober Esquire  
21           DEAN R. PROBER, ESQUIRE, #106207  
22           Attorney for Secured Creditor